

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 20, 2003

IN RE:

IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S TRIENNIAL
REVIEW ORDER- 9 MONTH PROCEEDING-LOOP
AND TRANSPORT

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DOCKET NO.
03-00527

ORDER DENYING JOINT MOTION IN PART AND GRANTING JOINT
MOTION IN PART AND RE-ESTABLISHING PROCEDURAL SCHEDULE

This matter is before the Hearing Officer pursuant to the *Motions to Amend Procedural Schedule and to Amend Initial Pre-Hearing Order Establishing Procedure* ("Motion") filed jointly on November 5, 2003 by BellSouth Telecommunication, Inc. ("BellSouth"), the Competitive Carriers of the South, Inc. ("CompSouth"), and United Telephone-Southeast, Inc. ("UTSE"). In the *Motion*, the Proponents request the following relief: that the Procedural Schedule be amended to allow for discovery requests by all Parties, not just BellSouth and UTSE; that the Hearing in this Docket be rescheduled for the week of March 29, 2004 as originally requested; and that paragraph (2)(A) of the *Initial Pre-Hearing Order Establishing Procedure* be amended to say "non-parties who may have information relevant to this case" instead of "non-intervening telecommunications service providers."

The Hearing Officer discussed this *Motion* with the Proponents at the regularly scheduled November 10, 2003 Authority Conference. In that discussion, consistent with

their *Motion*, the Proponents contended that the Hearing for this Docket should be held in conjunction with the Hearing in TRA Docket No. 03-00491 and that all proceedings in both Dockets could be completed within one week. Pursuant to these representations, the Proponents asked that the Hearing in this Docket be rescheduled for the week of March 29, 2003. The Hearing Officer asked, in the event that this request was granted, that the Parties make every effort to complete all three proceedings within the designated week and, to this end, that the Parties propose a hearing schedule for the presentation of evidence in each Docket before the appropriate Panel.

Based upon the discussions with the Proponents at the Authority Conference, the Hearing Officer wrote a letter to the parties on November 13, 2003, asking for written confirmation of the Parties' agreement or disagreement with the following terms:

1. The hearings in the three Triennial Review dockets (03-00491, Mass Market Switching, 03-00526, Batch Hot Cuts, 03-00527, Loop and Transport) will be completed during the week of March 29 through April 2, 2004. All oral testimony, including cross-examination of witnesses, will be heard during that time frame. Any oral testimony that is not or cannot be presented during that time frame will be knowingly and voluntarily waived by the Parties.
2. The cross-examination presented during the week of March 29 through April 2, 2004 will be segregated by individual docket.
3. The Parties jointly will present the Hearing Officer with an agreed final schedule for the week of March 29 through April 2, 2004, including specific witnesses and time frames for the presentation of testimony in each docket, by March 8, 2004.

The Parties were asked to present a written response to those terms by November 17, 2003. In addition, on November 13, 2003, the Hearing Officer issued an Order suspending the Procedural Schedule of October 27, 2003, pending the resolution of the *Motion*.

On November 17, 2003, UTSE and Sprint Communications Company, L.P. filed a response indicating their "written confirmation and agreement to the terms" of the letter. BellSouth filed a response on the same date. In its response, BellSouth stated it "believes" the hearings for the three Dockets could be completed during the week of March 29, 2004, "dependent on an equal distribution of time" between sides. BellSouth also responded it was "willing to consider" using transcripts of cross-examination from prior state hearings in lieu of live cross-examination. It agreed to begin hearings early in the day and continue late in the afternoon, and to use Saturday, April 3, 2004 to finish the hearing if necessary. BellSouth also agreed that its cross-examination presented during the week would be segregated by individual Docket. Finally, BellSouth agreed to "work with the other parties" to jointly present an agreed final schedule for the week by March 8, 2004.

On November 18, 2003, AT&T and CompSouth filed a response concurring with BellSouth's response. On the same date, MCIMetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. also filed their joint concurrence with BellSouth's response.

The Consumer Advocate and Protection Division of the Office of the Attorney General, a Party in this Docket, did not file a response.

Based upon the failure of all Parties to this Docket to respond to the letter of November 13, 2003, and the failure of all Parties to agree unequivocally with the terms and conditions set forth in that letter, the Hearing Officer finds that there is no reasonable basis on which to conclude that the Hearings for all three Triennial Review dockets (TRA Dockets 03-00491, Mass Market Switching, 03-00526, Batch Hot Cuts and 03-00527, Loop and Transport) can be completed during the week of March 29, 2004. Therefore, the

Proponents' request that the Hearing in this Docket be rescheduled for the week of March 29, 2004 is denied. The Parties may bring this matter back before the Hearing Officer at such time as there is agreement among the Parties as to the terms and conditions set forth in the letter of November 13, 2003.

The Proponents have further requested that the Procedural Schedule be amended to allow for discovery requests by all Parties. The first round of Discovery Requests in this Docket was intended to facilitate the identification of specific routes and customer locations for which BellSouth and UTSE intended to rebut the finding of impairment by the Federal Communications Commission for DS1, DS3, and dark fiber loops¹ and dedicated DS1, DS3, and dark fiber transport.² Following this identification, a second round of Discovery Requests by all Parties was anticipated. Therefore, the request to amend the Procedural Schedule to allow discovery requests by all Parties is granted as to the second round of discovery in the Schedule.

Pursuant to the foregoing, the Procedural Schedule for the completion of this Docket, suspended on November 13, 2003, is re-established and modified as indicated below.

November 26, 2003	Responses and Objections to Discovery Requests shall be filed with the TRA and served on all Parties.
December 5, 2003	Motions to Compel Discovery Responses shall be filed with the TRA and served on all Parties by BellSouth and UTSE.
December 11, 2003	Responses to Motions to Compel Responses to Discovery Requests shall be filed with the TRA and served on all Parties.

¹ 47 C.F.R § 51.319(a)(4), (5), & (6).

² 47 C.F.R § 51.319(e)(1), (2), & (3).

December 17, 2003	Supplemental Responses shall be filed with the TRA and served on all Parties.
December 23, 2003	BellSouth and UTSE shall file petitions with the TRA identifying specific routes and customer locations for which the company intends to undertake a rebuttal of the presumption of impairment.
January 2, 2004	The second round of Discovery Requests by all Parties shall be filed with the TRA and served on all Parties.
January 9, 2004	Responses and Objections to the second round of Discovery Requests shall be filed with the TRA and served on all Parties.
January 14, 2004	Motions to Compel Responses to the second round of Discovery Requests shall be filed with the TRA and served on all Parties.
January 20, 2004	Responses to Motions to Compel Responses to the second round of Discovery Requests shall be filed with the TRA and served on all parties
January 23, 2004	Supplemental Responses shall be filed with the TRA and served on all Parties.
January 30, 2004	Pre-filed Direct Testimony shall be filed with the TRA and served on all Parties.
February 9, 2004	Pre-filed Rebuttal Testimony shall be filed with the TRA and served on all Parties.
February 17-20, 2004	Hearing on the merits, beginning each day at 9 a.m. unless otherwise indicated.
March 19, 2004	Post-Hearing Briefs shall be filed with the TRA and served on all Parties.
April 2, 2004	Post-Hearing Reply Briefs shall be filed with the TRA and served on all Parties.

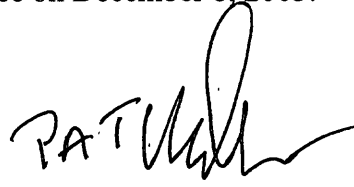
With respect to paragraph (2)(A) of the *Initial Pre-Hearing Order Establishing Procedure* issued on October 30, 2003, BellSouth expressed a desire to expand the use of subpoenas to all entities with information relevant to this Docket and to not be limited to only information available from telecommunications service providers. BellSouth explained that any challenge to the jurisdiction of the TRA to issue a subpoena would then be the prerogative of the subpoenaed entity. As Tenn. Comp. R. & Regs. 1220-1-2-.13 does not limit the subpoena power of the TRA to telecommunications service providers, the request of BellSouth is well-taken and the specified paragraph is modified to read as indicated below:

Third-Party Discovery – In the interest of creating a comprehensive evidentiary record, Discovery Requests, as delineated below, will be served on non-parties who may have information relevant to this case through the subpoena power of the TRA pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.13.

IT IS THEREFORE ORDERED THAT:

1. The request to amend the Procedural Schedule to allow for discovery requests by all Parties, not just BellSouth and UTSE, is GRANTED as to the second round of discovery requests.
2. The request to reschedule the Hearing in this Docket for the week of March 29, 2004 is DENIED.
3. The request to modify Paragraph (2)(A) of the *Initial Pre-Hearing Order Establishing Procedure* is GRANTED and such language is hereby modified as indicated above.
4. The Procedural Schedule for the completion of this Docket, suspended on November 13, 2003, is hereby re-established and modified as indicated above.

5. This Order may be reviewed by the Voting Panel assigned to this Docket during the regularly scheduled Authority Conference on December 8, 2003.

A handwritten signature in black ink, appearing to read 'PAT MILLER', with a large loop at the end of the last name.

Pat Miller, Director
as Hearing Officer